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C O N F I D E N T I A L ANKARA 001521

SIPDIS

STATE FOR E, EUR/SE, AND EB/IFD
TREASURY FOR OASIA - JLEICHTER AND MMILLS
NSC FOR MBRYZA AND TMCKIBBEN

E.O. 12958: DECL: 03/14/2009
TAGS: [EAID](#) [EFIN](#) [PGOV](#) [PREL](#) [TU](#)
SUBJECT: GOT PROPOSES LANGUAGE ON FINANCIAL AGREEMENT
AMENDMENT

REF: ANKARA 218

Classified by Ambassador Eric Edelman for reasons 1.4 (b) and (d).

11. This is an action request. See paragraph 6.

12. (C) Summary: MFA U/S Ziyal passed Ambassador Edelman a GOT proposal for revised language on the Financial Agreement Amendment, changing "conditions" to "stipulations" and stating "the determination of which, for the U.S. side is a binding requirement for disbursement." Ziyal specified that this language had been cleared by the Prime Minister, and was as far as the PM was willing to go. End Summary.

13. (C) In a meeting on other topics (reported septel) with the Ambassador, MFA Undersecretary Ugur Ziyal passed on another GOT proposal to massage the proposed amendment to the Financial Agreement (FA) in such a way as to ease the GOT's domestic political problem with the perception of the conditionality.

14. (C) The text Ziyal provided proposed changing paras (2) and (3) to read:

Begin text:

(2) to delete the existing language in Paragraph 5(a)(ii) in its entirety and replace it with "Turkey is satisfying all relevant stipulations in Public Law 108-11, 117 Stat. 559, 575 (2003), the determination of which, for the US side, is a binding US statutory requirement for disbursement."

(3) in the first line of Paragraph 5(e), to delete the language beginning "cooperating" through and including "Iraq," in the fourth line of such paragraph, and replace it with "satisfying all relevant stipulations in Public Law 108-11, 117 Stat. 559, 575 (2003),".

End text.

15. (C) Ziyal specified that the above language had been cleared by the Prime Minister, and that this was as far as the PM was willing to go. Ziyal also made clear that there is no urgency about a U.S. response until after the March 28 municipal elections.

16. (C) Comment and action request: Post requests Washington agency consideration of the new GOT proposal, followed by guidance to post on a response. Post believes the new language represents a GOT attempt to recognize that the stipulations/conditions are in U.S. law and that, if the GOT does not abide by them, the U.S. is legally required to stop disbursing. At the same time, the GOT is seeking a formulation that would allow the government to tell parliament that the language--unlike a treaty obligation--does not institute new requirements on the Turkish authorities that are legally binding under Turkish domestic law. Put another way, the Turks want the language to convey that they know we are required to stop disbursing if they don't comply with the conditionality, but they are only committing to comply with the conditionality to the extent they want to avail themselves of the disbursements.

17. (C) Comment continued: Post cannot judge the legal merits, but from a political perspective post believes that the GOT approach--if not its precise wording--seems to be in keeping with the spirit of the agreement and U.S. law. Unless this undermines us from a legal point of view, Post would urge acceptance of the GOT language. If Washington agencies cannot accept it, Post requests Washington suggest alternative language.

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